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Proposals 160, 189, 197, and 222 RELATING TO WATER RIGHTS, RESOURCES AND OWNERSHIP

Statement for
Con Con Committee on
Environment, Agriculture, Conservation and Land
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Although Proposals 160, 189, 197, and 222 differ in detail, they would all amend Article X of the Constitution to insert language related to water rights and hence are addressed further in this statement. This statement on the proposals does not represent an institutional position of the University of Hawaii.

Proposal 160

Proposal 160 would validly recognize the existence, or at least possible existence, of private water rights. It would, further, require that all such rights be condemned for public use. The State already has the power of condemnation when it is in the public interest. No useful purpose would be served in extending that power, nor in requiring its immediate full exercise which would require great expenditures by the State to compensate private owners of water rights.

Proposal 189

Proposal 189 would declare that the surface and groundwaters derived from natural sources are owned and held by the State as a public trust, although recognizes the existence or possible existence of certain type vested water rights. The implications of the limitation of its applicability to waters derived from natural sources are uncertain. All waters are derived ultimately from natural sources.

The concept of ownership is not usefully applied to the waters, which move through the hydrologic cycle in accordance with natural principles.

Water rights, if vested privately, cannot be considered publicly owned.

Proposal 189

The State should have regulatory powers over water uses, but these powers the State already has under the present Constitution.

The applicability of the public trust doctrine to water resource management indicated in the proposal may be valid, but the adoption of the proposal would have no practical effect.

Proposal 197

Proposal 197, would declare that the waters belong to the State. As Proposal 189, this proposal confuses ownership of water, ownership of water rights and regulatory powers over water use.

No useful purpose would be served by its adoption.

Proposal 222

Proposal 222, like Proposal 160, would require the State to condemn all private water rights, and addition all rights to transport, allocate, and use water. The latter rights are mostly parts of water rights. For reasons indicated in our discussion of Proposal 160, this proposal would serve no useful purpose.